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FACT SHEET 2015

HB 329

Update the System for Sealing Criminal Records by Providing Orders of Nondisclosure For Fine-Only Misdemeanors to Eligible Individuals

ACCESS TO ORDERS OF NONDISCLOSURE

There are indisputable barriers to success for people with criminal records. Depending on the crime, a person convicted of an offense in Texas will have difficulty, or be absolutely barred from, obtaining employment or a place to live, receiving a license for a particular occupation, obtaining certain types of educational assistance, or receiving federal or state benefits for basic human needs. **Even those with only fine-only misdemeanors on their record may face challenges in securing housing or employment.** Recognizing this, Texas has created a system by which criminal records can be sealed from the public through an order of nondisclosure.¹

The opportunity to petition for an order of nondisclosure provides an incentive for individuals to remain law-abiding by requiring that no additional crimes be committed after the offense at hand. Our current system provides for orders of nondisclosure for certain crimes committed at both the misdemeanor and felony levels, but somehow leaves out relief for those with fine-only misdemeanors—the lowest-level offense in our state. **It is time to update our system to provide relief for these lowest-level offenses.**

KEY FINDINGS

- **The eligibility criteria to petition for an order of nondisclosure are strict and not available to everyone.**
 - » Currently, in order to be eligible for an order of nondisclosure, an individual must have been placed on and successfully complete deferred adjudication community supervision, resulting in the dismissal and discharge of the case.² **HB 329 would also make eligible those individuals who have been convicted of or who have received a dismissal after deferred disposition for a fine-only misdemeanor.**
 - » Under current law, an individual must wait a designated amount of time after the charge is dismissed—five years for felonies and two years for certain misdemeanors—before being eligible for an order of nondisclosure.³ **Under HB 329, individuals would be subject to a one-year waiting period for fine-only misdemeanors.**
 - » Only some types of offenses are currently eligible for nondisclosure; certain violent, sex-related, and family violence offenses are ineligible.⁴
 - » Even if the offense for which the petition is filed is eligible for nondisclosure, an individual can still be disqualified by their criminal history—any record of certain violent or sex-related offenses makes the present offense ineligible—or a conviction or placement on deferred adjudication during the waiting time (does not include traffic tickets).⁵
 - » Finally, if an individual meets all these criteria and files a petition with a fee of approximately \$280, the judge must issue an order of nondisclosure only upon a finding that issuance of the order is in the best interest of justice.⁶ **HB 329 would also allow a judge to impose conditions, including community service and payment of fees, before granting an order of nondisclosure to someone who was convicted of a fine-only misdemeanor, as if the person had been placed on deferred disposition.**

- **Currently, individuals with fine-only misdemeanors that have been dismissed after deferred disposition are eligible to petition for an expunction of all records associated with the offense.** The lesser form of relief – nondisclosure – should not be restricted from those who already qualify for complete destruction of their records. (See attached, *Guide to the Differences Between Nondisclosure and Expunction in Texas*)

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 329 BY REPRESENTATIVE WU

HB 329 will allow eligible defendants who have been convicted of or granted deferred disposition for a fine-only misdemeanor, other than a traffic offense or an offense under a municipal ordinance or county order, to petition for an order of nondisclosure. The funds received from the petition fees for this class of offenses will be credited to the general fund of the municipality or county that received the fee.

Under HB 329, judges should be required to inform all defendants who are granted deferred disposition for a fine-only misdemeanor of their eligibility for both expunction and nondisclosure, as well as the practical implications of both forms of relief.

Citations

¹ [Tex. Gov't. Code, § 411.081.](#)

² [Tex. Gov't Code, § 411.081\(d\).](#)

³ *Ibid*, at § [411.081\(d\)\(2\), \(3\)](#). The two-year waiting period applies to misdemeanors under Chapter 20, 21, 22, 25, 42, or 46 of the Penal Code (offenses related to kidnapping and unlawful restraint, sexual offenses, assaultive offenses, offenses against the family, disorderly conduct and related offenses, and weapons). All other misdemeanors are not subject to a waiting time (see § 411.081(d)(1)).

⁴ *Ibid*, at § [411.081\(e\)](#). Ineligible offenses include an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure; an offense under Section 20.04, Penal Code (aggravated kidnapping); an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code (murder; capital murder; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; violation of certain court orders or conditions of bond in a family violence case; repeated violation of certain court orders or conditions of bond in a family violence case; stalking); and any other offense involving family violence, as defined by Section 71.004, Family Code.

⁵ *Ibid*.

⁶ *Ibid*, at § [411.081\(d\)](#).